IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX REFERENCE NO. 60 OF 1991.

Hindustan Thompson Associates Ltd. .. Applicant.

V/s.

Commissioner of Income-tax,
Bombay City VI, Bombay. ... Respondent.

Shri P.F. Kaka i/b Crawford Bailey & Co. for the applicant.

Shri A.N. Kotangale with D.A. Dubey for the respondent.

CORAM : V.C.DAGA AND A.S.AGUIAR, JJ.

DATED : 22.7.2005

P.C. :

. By this reference under section 256(1) of the Income-tax Act, 1961, the Income Tax Appellate Tribunal has referred the following questions of law for the opinion of this Court:

(i). Whether, on the facts and in the circumstances of the case, the ITAT was justified on facts and in law in holding that the assessee is not an 'industrial company' within the meaning of section 2(7)(C) of the Finance Act, 1980, since the assessee is getting commission on technical services and everything is being done on behalf of the clients, hence the assessee was rendering professional services and nothing was done on its own, i.e. in his own account.

2. Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in holding that surtax payable pursuant to the Companies (Profits) Surtax Act, 1964 was not an allowable expenditure in computing the total income for the year under reference.

3. Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in upholding the disallowance under Rule 6D of the I.T. Rules, 1962?"

. Learned counsel for the parties agreed that all the above 3 questions are covered either by judgment of the Apex Court or that of the Bombay High Court.

. So far as question No.1 is concerned, the same is covered by the judgment of the Apex Court in the case of **C.I.T. vs. Shilpi Advertisement Ltd. (2003) 263 ITR 479 (SC)**. In this view of the matter, the first question is answered in the affirmative i.e. in favour of the assessee and against the revenue.

. So far as second question is concerned, the same is also covered by the judgemnt of the Apex Court in the case of **Smith Kline and French (India) Ltd. and ors. vs. C.I.T. (1996) 219 ITR 581 (SC)**. In this view of the matter, the said question is answered in the affirmative i.e. in favour of the revenue and against the assessee.

. So far as third question referred is concerned, the same is covered by the judgment of the Bombay High Court in the case of **C.I.T. vs.Aorow India Ltd. (1998) 229 ITR 325.** In this view of the matter, we answer the question in the affirmative i.e. in favour of the revenue and against the assessee.

. Reference accordingly stands disposed of with no order as to costs.

(A.S.AGUIAR, J.) **(V.C.DAGA, J.)**